

IN THE MATTER OF:

The Proposed Assessment of Unauthorized
Substance Tax dated April 11, 2006
by the Secretary of Revenue
of the State of North Carolina

FINAL DECISION

Docket No. 2006-150

against

AN (AN number)

(Name of Taxpayer), Taxpayer

Upon Taxpayer's timely written request for an administrative tax hearing, and pursuant to N.C.G.S. 105-260.1, this matter came before the Assistant Secretary of Revenue, Eugene J. Cella, who conducted a hearing on February 6, 2007, in the City of Raleigh, North Carolina. Taxpayer was represented at hearing by (name of attorney). For purposes of N.C.G.S. 105-241.1, the hearing concluded on March 8, 2007.

Pursuant to N.C.G.S. 105-113.111 and N.C.G.S. 105-241.1(a)&(b), a notice of proposed assessment was delivered to Taxpayer by U.S. Mail sent to Taxpayer at Taxpayer's last known address of (address of Taxpayer). Based on Taxpayer's unauthorized possession of 1,330 grams of cocaine and 608 grams of marijuana on April 7, 2006, to which no tax stamps were affixed, the notice from the Unauthorized Substances Tax Division ("the Division") proposed an assessment comprised of excise tax in the amount of \$68,628.00, penalties totaling \$27,451.20 and interest in the amount of \$460.33, for a total proposed tax liability of \$96,539.53.

ISSUES

Two questions are at issue: (1) Did Taxpayer have actual or constructive possession of cocaine and marijuana without proper tax stamps affixed, and (2) Is Taxpayer subject to the assessment of unauthorized substance excise tax?

EVIDENCE

Exhibits from the Division admitted into the record prior to its closing in support of the assessment were as follows:

US-1 Form BD-10, "Notice of Unauthorized Substance Tax Assessment," dated April 11, 2006.

- US-2 Letter from Taxpayer's attorney, stamped as received by the Division on May 11, 2006, requesting a hearing and additional correspondence dated May 18, 2006.
- US-3 Letter from the Assistant Secretary, dated May 15, 2006, regarding the scheduling of the hearing and additional correspondence dated July 31, 2006 and November 2, 2006.
- US-4 Form BD-4, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Controlled Substances," which names Taxpayer as the possessor of the controlled substances.
- US-5 Law Enforcement Investigation Report.
- US-6 Memorandum from E. Norris Tolson, Secretary of Revenue, dated May 16, 2001, delegating to Eugene J. Cella, Assistant Secretary of Revenue, the authority to hold any hearing required or allowed under Chapter 105 of the North Carolina General Statutes.
- US-7 Supplemental Law Enforcement Investigation Report from Wilson County Sheriff's Office.

No exhibits were entered into the record in support of the objection to the assessment.

In addition to the exhibits submitted by the Division, the Assistant Secretary entered into the record of the hearing both the prepared brief of the Division and the transcript of the proceeding.

FINDINGS OF FACT

Based on the foregoing evidence of record, the Assistant Secretary makes the following findings of fact:

1. On April 6, 2006, Wilson Police Department (WPD) detectives initiated an investigation into the trafficking of cocaine and marijuana in the Wilson area. Detectives received information that a male guest (first-referenced male) staying at a Wilson area hotel was involved in the distribution of marijuana and cocaine. Surveillance began at the hotel and the individual, accompanied by another male, was observed leaving the hotel in a blue Ford Explorer with Georgia license plates.
2. Over the next 48 hours, WPD detectives, assisted by Wilson County Sheriffs Office (WCSO) detectives, followed the Ford Explorer to several locations in Nash, Wake, and Wilson counties, including Taxpayer's residence in Wilson, North Carolina.

3. On April 7, 2006, detectives observed the Ford Explorer at Taxpayer's residence. While observing the residence, they saw a Gold Acura driven by a third male arrive, pickup the first-referenced male, and leave. The vehicle traveled down the road and then returned to Taxpayer's residence to drop off the same male passenger.
4. A vehicle stop was conducted on the Acura once it was away from the residence. WPD detectives located within the vehicle what they determined to be 500 grams of cocaine through their training and experience.
5. Later that evening, WPD detectives observed the first-referenced male driving back and forth several times in front of Taxpayer's residence. They had gathered additional information that this male subject was to be involved in delivering another 500 grams of cocaine. This male, still driving the blue Ford Explorer, finally returned to Taxpayer's residence and then left after a few minutes. At this time, detectives stopped the vehicle and approached Taxpayer's residence.
6. Taxpayer was located at his residence and gave written consent for WPD detectives to search. The search yielded packaging material for a kilogram of cocaine, surveillance equipment, and night vision equipment. Also, the detectives located what they determined to be 500 grams of cocaine through their training and experience. This quantity of cocaine was located in a green Saturn automobile parked at Taxpayer's residence. WPD and WCSO surveillance revealed that Taxpayer drove this green Saturn on a number of occasions prior to discovery of the cocaine and exercised control over this vehicle.
7. During the earlier surveillance, Taxpayer was observed by detectives traveling to and from his father's farm in Wilson County, North Carolina, on several occasions and was observed to visit a particular building on that farm several times. Taxpayer's father stated to detectives that Taxpayer used this building.
8. Detectives obtained consent from Taxpayer's father to search the farm building visited by Taxpayer. Inside this farm building, WPD detectives located what they determined, through their training and experience, to be an additional 325 grams of cocaine, packaging material, scales, 608 grams of marijuana, and a location used to conceal the drugs.
9. On April 11, 2006, an assessment of unauthorized substance tax was made against Taxpayer comprised of excise tax in the amount of \$68,628.00, penalties totaling \$27,451.20 and interest in the amount of \$460.33, for a total proposed tax liability of \$96,539.53, based upon Taxpayer's possession of 1,330 grams of cocaine and 608 grams of marijuana. Notice of said assessment was sent to Taxpayer by U.S. Mail.

10. Upon being assessed and in a timely manner, Taxpayer requested in writing an administrative tax hearing.
11. At hearing, Taxpayer disputed his involvement with the cocaine and marijuana at issue. Taxpayer gave testimony at hearing that he did not physically possess or control the cocaine and marijuana assessed in this matter. Taxpayer and his sister testified that the cocaine and marijuana found and subsequently assessed to Taxpayer in this matter likely belonged to, and/or was controlled by, various trespassers upon the adjacent property. They further testified that local drug dealers unconnected with the (name of family) family frequented the adjacent property.
12. The Division indicated that it had no objection to amending this assessment to conform to the quantities of cocaine and marijuana as indicated in the Law Enforcement Investigation Report attached hereto as Exhibit US-5. This would result in a tax of \$68,378.00, penalties of \$27,351.20, and interest until the date of full and final payment.
13. On April 7, 2006, Taxpayer had possession of 1,325 aggregate grams of cocaine and 608 grams of marijuana secreted and/or stored by Taxpayer upon premises under his nonexclusive dominion and control or in a vehicle under his nonexclusive dominion and control for the purpose of Taxpayer dealing and trafficking in same.
14. No tax stamps were purchased for or affixed to the cocaine and marijuana as required by law.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Assistant Secretary makes the following conclusions of law:

1. A preponderance of the evidence supports the foregoing findings of fact.
2. Taxpayer had constructive possession of 1,325 aggregate grams of cocaine and 608 grams of marijuana on April 7, 2006.
3. Taxpayer's possession of the aforementioned substances in the noted quantities rendered him a "dealer" as that term is defined in N.C.G.S. 105-113.106(3), and in turn subjected Taxpayer to timely payment of Unauthorized Substances Excise Tax within 48 hours after taking possession of same.
4. Taxpayer failed to pay Unauthorized Substances Excise Tax due the State of North Carolina in a timely manner.

5. The appropriate assessment against a dealer who possesses 1,325 grams of cocaine and 608 grams of marijuana without having paid Unauthorized Substances Excise Tax on same in a timely manner consists of \$68,378.00 in excise tax, penalties totaling \$27,351.20 and interest until date of full and final payment.
6. Taxpayer is liable for excise tax in the amount of \$68,378.00, penalties totaling \$27,351.20 and interest until date of full and final payment.

DECISION

Wherefore an assessment based on possession of 1,325 grams of cocaine and 608 grams of marijuana, comprised of excise tax in the amount of \$68,378.00 and penalties totaling \$27,351.20, is deemed to be proper under the law and the facts, it is sustained and declared to be final and immediately due and collectible, together with such interest as allowed by law.

This the 4th day of June, 2007.



Eugene J. Cella
Eugene J. Cella
Assistant Secretary of Revenue